Primestar Construction Corporation *and* International Union of Operating Engineers, Local 351.
Case 28–CA–211009

October 23, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

The General Counsel seeks a partial default judgment in this case on the ground that the Respondent has failed to adequately answer certain allegations in the complaint. Upon a charge filed by the International Union of Operating Engineers, Local 351 (the Union) on December 4, 2017, the General Counsel issued a complaint on June 28, 2018[1] against Primestar Construction Corporation (the Respondent), alleging that the Respondent violated Section 8(a)(5) and (1) of the Act. By letter dated July 13, the Region advised the Respondent that no answer to the complaint had been received and that unless an answer was received by July 20, a motion for default judgment would be filed. The Respondent, acting pro se, filed an answer on July 19.

On July 24, the General Counsel filed with the National Labor Relations Board a Motion for Certain Allegations to Be Deemed Admitted, or, in the Alternative Motion for Partial Default Judgment and Motion in Limine. On July 26, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. In response to the Notice to Show Cause, the General Counsel filed a statement in support of its motion. However, the Respondent was not properly served with the Notice to Show Cause and the Board issued a Supplemental Notice to Show Cause on August 31. The Respondent filed no response to the Supplemental Notice.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent "must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial." See generally *Moo & Oink, Inc.*, 356 NLRB 1249, 1249–1250 (2011) (finding two letters submitted by the respondent "primarily consist[ing] of factual statements" that did not correspond to the allegations in the complaint did "not . . . constitute a legally sufficient answer under Section 102.20"). In his motion for default judgment, the General Counsel asserts that the Respondent's July 19 letter "fails to specifically admit, deny, or explain the allegations in paragraphs 1 through 4 in the Complaint." The General Counsel therefore requests that default judgment be granted as to paragraphs 1 through 4 and that these allegations be deemed admitted as true.

Complaint paragraph 1 alleges that "[t]he charge in this proceeding was filed by the Union on December 4, 2017, and a copy was served on Respondent by U.S mail on December 5, 2017." Paragraph 2(a) alleges that:

> At all material times Respondent has been a corporation with an office and place of business in El Paso, Texas, and has been engaged as a maintenance contractor in the construction industry doing commercial and office construction and repair for various clients, including the United States Government.

Complaint paragraph 2(b) alleges that "[i]n conducting its operations during the 1-month period ending December 4, 2017, Respondent purchased and received at its constructions sites located in the State of Texas goods valued in excess of $50,000 directly from points outside the State of Texas," and complaint paragraph 2(c) alleges that "[a]t all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act."

At paragraph 3, the complaint alleges that "[a]t all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act." Finally, paragraph 4 of the complaint alleges that "[a]t all material times, Felicia James has held the position of President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(3) of the Act[.]"

On July 19, the Respondent submitted a letter to the Region via electronic filing. The letter stated, in relevant part:

> Please let this correspondence serve a notice of Primestar Construction Corporation response to the alleged Complaint.
>
> 1. Primestar has not received Complaints from (the Union) Local 351 as described in the Notice.
>
> 2. (a) Primestar remains a Corporation.
>
> (b) Primestar only conducted and operated inside what would be deemed the United States Border

[1] All dates hereafter are 2018 unless otherwise noted.

Regions, any other dealings would have not been authorized by Primestar Construction.

(c) Primestar operated solely based on its GSA contract with the Government.

The Union was acting upon the CBA based on following the contract with GSA

3. The President position is based on internal operation and the contractual agreement of the federal contract.

Analysis

We recognize that the Respondent does not appear to have legal representation in this proceeding. In determining whether to grant a motion for default judgment on the basis of a respondent's failure to file a sufficient answer, the Board typically shows "some leniency towards respondents who proceed without benefit of counsel." *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). Indeed, "the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations." Id. (internal citation omitted); see also *Carpentry Contractors*, 314 NLRB 824, 825 (1994).

Having duly considered this matter, we find that, given the Respondent's pro se status, default judgment is not warranted here with regard to paragraph 1 of the complaint but, as explained below, default judgment is warranted with regard to complaint paragraphs 2 through 4.

At the outset, we consider the Respondent's July 19 letter to be a timely filed answer, as it was timely filed in response to the Region's July 13 letter requesting an answer to the complaint. Regarding complaint paragraph 1, alleging that "[t]he charge in this proceeding was filed by the Union on December 4, 2017, and a copy was served on Respondent by U.S mail on December 5, 2017," the Respondent's letter sufficiently denies that paragraph's allegation, as it states that the Respondent "has not received Complaints from (the Union) Local 351 as described in the Notice." The Respondent's reference to the "Complaints from (the Union) Local 351" is reasonably read to refer to the charge in this proceeding. As such, it denies the allegation. Accordingly, we shall deny the motion for default judgment as to complaint paragraph 1.

However, as to complaint paragraphs 2 through 4, we find that default judgment is warranted. Even considering the Respondent's pro se status, the Respondent's letter cannot be reasonably read to deny the substance of those allegations. With respect to paragraph 2(a), alleging that "at all material times Respondent has been a corporation," the Respondent's letter neither admits nor denies the allegation, and instead simply states only that it "remains a [c]orporation." The letter's response to complaint paragraph 2(b) does not include anything that could reasonably be read to deny the allegation that it "purchased and received at its construction sites located in the State of Texas goods and services valued in excess of $50,000 directly from points outside the State of Texas." Rather, it simply specifies that those construction sites are located in "Border Regions." Similarly, the letter's response to complaint paragraph 2(c), alleging that the Respondent "has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act," also fails to address the allegation, as the response states only that the Respondent has "operated solely based on its GSA contract with the Government."

Additionally, the Respondent's answer to complaint paragraph 3 in no way denies the paragraph's allegation, that "the Union has been a labor organization within the meaning of Section 2(5) of the Act." In fact, by stating that '[t]he Union was acting upon the CBA based on following the contract with the GSA," it arguably affirms the allegation. Finally, in response to complaint paragraph 4, alleging that "[a]t all material times, Felicia James has held the position of President and has been a supervisor . . . and an agent of Respondent," the letter states only that its "[p]resident position is based on [its] internal operation and [its] federal contract." This vague statement in no way addresses the allegation that James is the Respondent's president, supervisor or agent.

In sum, the Respondent's answer sufficiently denies the substance of the allegation in complaint paragraph 1 but neither admits nor denies the substance of the allegations in complaint paragraphs 2 through 4. Accordingly, we shall deny default judgment with respect to paragraph 1 of the complaint and shall grant default judgment with respect to paragraphs 2 through 4.

ORDER

IT IS ORDERED that the General Counsel's Motion for Partial Default Judgment is denied with respect to the allegations in paragraph 1 of the complaint and is granted with respect to the allegations set forth in paragraphs 2 through 4 of the complaint.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 28 for further appropriate action consistent with the Decision and Order.

Dated, Washington, D.C. October 23, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD